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THE INITIATIVE AND REFERENDUM IN COMMISSION CITIES

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The statement is sometimes made that the initiative and the referendum embody one of the essential features of the commission form of city government. That this is not strictly true will be evident if one pauses to consider that the first commission governed cities had no such provisions in their charters. The charter of Galveston, the first city in the United States to adopt the plan, made no mention of them, yet no one would hesitate to class it as a commission governed city. Several of the smaller towns of Texas and neighboring states have followed the example of Galveston in this respect and the residents of these cities, although eminently proud of their city government, do not look with favor upon provisions for direct legislation in municipal affairs. Six years after the adoption of the Galveston charter in 1901, the City of Des Moines obtained her new charter, and it was in this charter for the first time that complete provisions for the referendum and the initiative were introduced, and then only after the first charter proposed for the city had been rejected.

Not only is it true that some commission governed cities contain no provisions for popular legislation, but it is equally true that many cities with the ordinary common council form of government have the initiative and referendum in some form or other. In fact, most city charters adopted within recent years, regardless of the particular form of government for which they provide, contain provisions of this sort. Oklahoma and Oregon have constitutional provisions for municipal referenda. Illinois and Nebraska have laws providing for the reference of questions of statewide or local concern. Buffalo, Grand Rapids, Detroit, and Chicago are examples of cities that have made frequent use of the referendum in some form to aid in the solution of local problems.¹ The City of Newport, with a council

¹ For an interesting description of the operation of the referendum in Buffalo, see letter of W. E. Curtis in the *Chicago Record-Herald*, June 29, 1911.

equal in size to both houses of an ordinary state legislature, is an example of a city with the common council plan and at the same time with the referendum and the initiative.

The initiative and referendum are not, therefore, features peculiar to the commission form of city government. They may be found therein or they may not, and they are frequently found as parts of city governments of the old type. Indeed, they represent methods of popular control and not any particular form of government.² Not only are they being applied in city government but in state and other local governments as well. Within recent years the desire for more effective popular control over public officials has grown with remarkable strides. This desire is given expression through the insertion of initiative and referendum clauses in the organic laws of cities and states.

There is, however, a particular reason why provisions for direct legislation have come to be so closely associated with the commission plan. One of the most serious objections made to the commission government is that it concentrates too much power into the hands of a few individuals. Such a scheme, it is maintained, is inimical to popular government unless some device is used to prevent the commissioners from exercising their authority to the detriment of the masses. The initiative and referendum, coupled with the recall, furnish this device. The recall serves as a check upon their actions as administrative officials, while the initiative and the referendum guarantee that their actions shall not be contrary to public opinion. They have, therefore, been inserted in the later commission charters largely to overcome the objection that the new form of city government was undemocratic. Thus, while it cannot be said that the initiative and referendum are essential parts of the commission plan, they are in complete harmony with it, and serve to destroy the source of much opposition that has been directed against it.

Mention has been made of the fact that, prior to 1907, no commission governed cities contained provisions for the complete initiative and referendum. Some, however, had incorporated into their charters certain sections providing for a limited referendum, notable among them being the City of Houston. The charter of that city, adopted in 1905, required a referendum on the question of

² MacGregor, *City Government by Commission*, published as Bulletin No. 423 of Wisconsin series, p. 30.

granting franchises for longer periods than thirty years, and provided for an optional referendum on any proposed franchise grant, either at the instance of the city council, or upon petition of five hundred legal voters of the city, or upon the request of the applicant for the franchise. In case the applicant requests a referendum he must bear the expense of the election incurred thereby. The operation of the referendum was thus limited exclusively to the question of granting or extending franchises, while no provision whatever was made for the initiative.

Special sections relating to the reference of proposed franchises are to be found in many of the later charters even when such charters contain the general provisions for direct legislation. The Illinois law, for example, necessitates a referendum on all proposed franchises. In Iowa, all franchises granted to public service corporations must be approved by a majority of the voters before going into effect. The law of Kansas, applying to cities of the second class, the laws of Montana, South Dakota, Louisiana, and Washington, and the special charters of several cities—all provide for a compulsory referendum of proposed franchises.³ In several other cities franchise grants may be submitted upon the petition of a specified number of voters.⁴ In Tulsa, Oklahoma, franchises may be proposed by the initiative, upon petition of twenty-five per cent, and in McAlester, a special election may be called upon a similar petition.

Complete provisions for the reference of any ordinance⁵ are now to be found in the commission government laws of several states⁶ and in the special charters of many cities in various states. The referendum may be ordered upon the petition of a specified number of the legal voters of a city, or the council may usually

³ Gloucester (Mass.), Modesto, Oakland, Vallejo, Duncan, Colorado Springs, Grand Junction, Tulsa, Ardmore, and a few others. Corpus Christi has the compulsory referendum on long term franchises and for all others a referendum upon petition of twenty per cent of the voters, or upon the request of the applicant.

⁴ Sapulpa, Okla., petition of twenty-five per cent; Tacoma, Wash., twelve per cent; Dallas, petition of 500 legal voters, and submission at the next annual city election; Greenville, Texas, petition of 100 voters; Birmingham, Ala., petition of 1,000 voters in thirty days.

⁵ Except emergency ordinances, as noted later.

⁶ Illinois, Kansas, Iowa, South Carolina, South Dakota, New Jersey, Washington, Montana, and Wisconsin. Oklahoma and Oregon have constitutional provisions for municipal referenda.

submit an ordinance on its own initiative. The most common requirement for a petition for referendum is twenty per cent of the electors, the number of the latter being based upon the last vote for mayor. The general laws of Iowa, Kansas, Washington, Montana, and Wisconsin require twenty-five per cent; Illinois, ten per cent; South Carolina, twenty per cent; New Jersey, ten per cent; and South Dakota, only five per cent of the legal voters. The charter of Fort Worth, Texas, requires the petition to be signed by 500 electors, and that of Lewiston, Idaho, by 300 electors. Five special charter cities require twenty-five per cent; four, fifteen per cent; and two, ten per cent.⁷

Except in the instances noted below, petitions for the reference of measures must be filed shortly after the board of commissioners has acted upon them. As a rule an ordinance does not go into effect at once but remains in abeyance for a definite length of time, and it is during this time that a petition may be circulated and signed by the requisite number of voters protesting against the proposed ordinance and requesting its submission to a popular vote. The length of this period varies from ten to thirty days. In Illinois, and in the special charters of Amarillo, Berkeley, Dallas, Ft. Worth, Grand Junction, and Marshall, it is thirty days; in Iowa, Kansas, and Wisconsin, and in the special charters of Austin, Colorado Springs, Gloucester, Haverhill, and Tacoma, it is only ten days. In South Dakota ordinances are made to go into effect twenty days after their passage, while in South Carolina and in Ardmore, Oklahoma, they go into effect immediately, and a referendum petition may be presented at any time thereafter. Upon the filing of a petition for a referendum, the council must either repeal the objectionable ordinance in its entirety, or submit it to a popular vote at either a general or a special election.⁸ Any proposition submitted under the referendum requires for favorable action only a majority of votes cast on the question.

Emergency ordinances are invariably excluded from the

⁷ Others not noted here do not vary greatly from the above in the percentage required. Shreveport, La., has a charter requiring a petition of thirty-three per cent for the reference of measures, while that of San Diego, Cal., requires seven per cent. See Beard, *Loose Leaf Digest of Short Ballot Charters*, p. 41201, *et seq.*

⁸ Unlike measures proposed by the initiative, the size of the referendum petition is not a factor in determining whether the submission shall be made at a general or a special election.

operation of the referendum. The charter usually declares specifically what shall constitute an emergency, and such ordinances must be so declared and passed by an extra majority of the council.⁹ The Iowa law, for instance, excludes from the operation of the referendum all ordinances "for the immediate preservation of the public peace, health, or safety." Such ordinances, however, must contain a statement of their urgency and be passed by a two-thirds vote.

It should be noted that the initiative is not always found in commission city charters in conjunction with the referendum. Sometimes one of them is provided for and the other is not. Some cities already mentioned have a limited referendum on ordinances granting franchises, and no provision for the initiative. The general law of Wisconsin makes no mention of the initiative, although it does contain a referendum section. On the other hand, the law of Idaho provides for the initiation of ordinances by the people, but does not provide for a reference of ordinances passed by the city council. With some few exceptions, however, the two are found together.

By virtue of these initiative provisions, the people may propose any ordinance by petition, signed by the requisite number of voters, and submit it to the city council. That body is ordinarily given an opportunity to pass the ordinance without alteration within a specified time, usually twenty days;¹⁰ but if it does not do so, it must submit the proposed ordinance at a special election or at a following general election. The number of signatures to the petition usually determines which of the two methods shall be used.

The size of the petition required varies from five per cent in South Dakota to forty per cent in cities of the second class in Kansas. One class of charters specifies only one size of initiative petitions. The charter of Austin, for example, requires a petition signed by twenty-five per cent of the last vote for mayor, and the ordinance must be submitted at a special election within forty days unless a general city election is due within ninety days thereafter. The general laws of South Carolina, South Dakota, and the special charters of Amarillo, Ardmore, Ft. Worth, Gloucester, and

⁹ Ordinarily two-thirds or four-fifths, depending on the size of that body.

¹⁰ In Austin, Texas, the council must pass the proposed ordinance within ten days without alteration; in Illinois, thirty days.

Marshall are of this type, although the number of required signatures varies.¹¹ Another class of charters permits of two possible sizes of petitions in any particular instance and upon the size of the petition depends the necessity of calling a special election. On this point the Iowa law may be cited for illustration. In that state if the petition contains the signatures of twenty-five per cent of the voters, the council, unless it passes the ordinance, must call a special election unless a general municipal election is fixed within ninety days thereafter; but if the petition contains signatures of from ten to twenty-five per cent of the voters, then the council must submit the proposed ordinance at the next regular municipal election. In other words, if a fourth of the voters sign an initiative petition, the ordinance must be submitted to a vote without delay; but if a fewer number of signatures is attached to the petition, it is allowed to wait for reference until the next regular election. Most of the charters have provisions of this sort. The idea seems to be that, if a larger percentage of the voters sign an initiative petition, the matter is sufficiently urgent to demand immediate settlement.¹²

The form, content, etc., of petitions for the initiation or reference of ordinances are commonly prescribed in detail. All the signatures need not be on the same sheet, but one signer of each paper must take oath that all the signatures on that particular sheet are genuine. Usually the signer is required to give his address.¹³ In Idaho, each signer must state that he has read the proposed measure section by section and fully understands its content, meaning, and purpose, and must accompany his signature with a statement, in two hundred words, of the reasons why he thinks that the proposition should become law. When the petition is completed, it is filed with the clerk, who is usually given ten days in which to examine it and ascertain, by comparison with a list of qualified voters whether the signatures are those of eligible voters, and whether they are of sufficient number to meet the requirements of

¹¹ Ardmore, Austin, and Marshall require twenty-five per cent; South Carolina, twenty per cent; Amarilla, fifteen per cent; South Dakota, five per cent; and Ft. Worth, 500 qualified voters. See table compiled by MacGregor, *Wisconsin Bulletin*, pp. 69-70.

¹² The larger petitions usually vary from fifteen to twenty-five per cent, and the smaller ones from five to fifteen per cent. For a complete list see Beard, *Loose Leaf Digest of Short Ballot Charters*, p. 41201.

¹³ In Alabama, in petitions for the submission of franchises, he must likewise make an affidavit stating his age, color, and whether he has paid poll tax.

the law. Should it prove to be faulty, a few days are sometimes granted in which it may be amended.

Ordinances proposed by the initiative require a majority voting thereon to obtain their adoption. There is no limit to the number of ordinances that may be proposed at any single election, but practically all the charters forbid calling more than one special election in six months. In this way the extra expense incurred by too many special elections is avoided without affecting any substantial limitation on the use of the initiative and referendum. The city council is ordinarily vested with the power to submit, at any time, a proposition to repeal or amend any ordinance passed by the initiative, but whenever an ordinance is adopted by vote of the people, it cannot be changed or repealed in any other way.

Special provisions are usually found in the city charters insuring some notification to the voters when propositions or ordinances are to be submitted to a popular vote. The Iowa law requires one publication in each daily newspaper of the city from five to twenty days before the election at which they are to be submitted.¹⁴ The Kansas law requires that all proposed franchises shall be published in the official city paper once a week for three weeks before the election. The Austin charter necessitates at least three publications of any proposition in a daily newspaper of the city between ten and twenty days prior to submission.¹⁵ In Berkeley, the council may order the measure to be printed, and, together with a sample ballot, sent through the mails to each voter at least three days before the election.¹⁶ A clear statement of the nature of the proposed ordinance must usually be made on the ballot.¹⁷ Sometimes the charter specifies the position which the measure shall occupy on the ballot. Two charters stipulate that questions shall appear below the list of candidates, if there be any,¹⁸ and another states that the question shall be placed to the right of the list of candidates.¹⁹

Briefly summarizing these provisions for the initiative and referendum, it may be noted, in the first place, that many charters have taken special precautions to obtain the submission of proposed

¹⁴ Section 19.

¹⁵ Art. 9, sec. 2.

¹⁶ But in lieu of this procedure, the council may order the measure printed in the newspapers, as are other ordinances.

¹⁷ Iowa law, Section 9; charter of Ardmore, Okla., 1909, section 7.

¹⁸ Those of Haverhill, sec. 42, and Gloucester, sec. 27.

¹⁹ Berkeley charter, 1908, sec. 15.

franchise grants. Where a general referendum is provided for, the procedure may be begun in one of two ways: First, the council may submit any ordinance they may see fit; second, the people of the city may, by a petition signed by a specified number of voters, order the council to submit any ordinance. Furthermore, through the initiative, the people may propose an ordinance by petition, and compel the council to pass it without alteration or submit it to a popular vote at a special election called for that purpose or at the next general municipal election.

It would be useless to predict the extent to which these provisions for direct legislation in municipal government will be used in the future. As yet they have scarcely been used at all. It is, indeed, very probable that ordinarily they will not be utilized except on unusual occasions when important issues arise that awaken great public interest, or when actions of the city commissioners arouse the distrust of their constituents. Indeed, the very fact that they are a part of the law of the municipality and may be called into operation at any time will tend to make those occasions less frequent when it will be desirable to use them. Their very presence in the city charter acts as a restraining influence. Hence the chief value of the initiative and referendum in commission government, as elsewhere, will perhaps lie in the moral effect which the possibility of their exercise will have upon the actions of the city officials—an effect which is bound to advance good city government.

Whatever potential value the initiative and referendum may possess, their value as active instruments for obtaining an expression of public opinion will depend primarily upon the character and extent of interest shown by the voters in questions submitted under these provisions. If the scheme is to be a success in registering the popular will, the people must vote. Unless they do, the result of a referendum will be, at most, only a very incomplete record of public sentiment, the value of which will be proportionate to the number of voters who render a decision on questions at the polls. At an election held in Omaha, Nebraska, in August of this year (1911) the commission plan was adopted by thirty-one per cent of the voters of the city, with less than half the registered voters marking the proposition.²⁰ There may be a question

²⁰ The total number of registered voters was approximately 17,000. The vote for the commission plan was 5,341, against 2,345.

In 1908, when the agitation for a new city charter was begun in Buffalo,

whether such a vote adequately expresses the sense of the entire electoral body.

The votes, however, that have been obtained from a few of the numerous other cities that have recently voted on the question of adopting the commission plan of city government show that, in these particular instances at least, a larger proportion of the eligible voters have voted on the proposition than was the case in Omaha. In Rockford, Illinois, sixty per cent of the eligible voters of the city voted the commission government ballot. At Springfield, Illinois, sixty-four per cent of those voting at the regular election immediately following, voted on the question of adopting the commission plan, and this number represented fifty-two per cent of the entire voting strength of the city. When the question was submitted in Eau Claire, Wisconsin, it received consideration from seventy-eight per cent of the number of voters who had cast a ballot at the last municipal election immediately preceding.²¹ At all these elections the proposition of adopting the commission form of government was the only issue demanding consideration.

Moreover, the experiences of cities without the commission form of government, which have used the initiative or the referendum in some form or other, would indicate that, in general the electors devote a fair degree of attention to local questions that are submitted for their approval or disapproval. The adoption of liquor local option, the issuance of city bonds, and other questions that have been frequently submitted in many cities have usually fared well in this respect. In the City of Chicago, twelve propositions relating to the solution of the traction problem have been referred to a popular vote within the last ten years, and have received the attention of an average of about seventy-seven per cent

the people of the city were requested to express their opinion concerning the desirability of asking the legislature for a home rule charter. Only twenty-five per cent of those voting at the election expressed their approval or disapproval of the proposition. Vote for, 13,288; against, 4,346. Total vote at the election was approximately 70,000.

²¹ Following is the vote in each of the above cities:

Rockford, Illinois: For, 1,107; against, 4,029; total number of eligible voters, approximately, 8,500.

Springfield, Ill.: For, 3,712; against, 3,087; total vote at the succeeding municipal election, 10,662; total number eligible voters, approximately, 13,000.

Eau Claire, Wisconsin: For, 1,866; against, 995; total at last election immediately preceding, 3,659.

of those voting at the elections at which they were submitted.²² With the added interest aroused by wide discussion of the whole question of commission government and the part which the people play therein, there can be no reason for assuming that the residents of cities working under the new form of city charter will not take as great an interest in propositions referred to them through the initiative and the referendum as has been taken in the past by residents of other cities under less favorable conditions.

²² But the experience of Buffalo with referenda under a public opinion law has not been as encouraging.